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LEWIS AND ROCA LLP
1663 Hwy 395, Suite 201
Minden, NV 89423

EXAMINER	
RAHMAN, MOHAMMAD L	
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Ex parte JONATHAN J. OLIVER, SCOTT ROY,
SCOTT D. EIKENBERRY, BYRAN KIM,
DAVID A. KOBLAS and BRIAN K. WILSON

Appeal 2009-007927
Application 10/650,487
Technology Center 2400

Before JOSEPH F. RUGGIERO, CARLA M. KRIVAK and
CARL W. WHITEHEAD, JR., Administrative Patent Judges.

WHITEHEAD, JR., Administrative Patent Judge.

DECISION ON APPEAL

STATEMENT OF THE CASE

Introduction

Appellants appeal under 35 U.S.C. § 134 (a) from a final rejection of independent claims 1, 20, 23, 24, 28, 29, 30 and 31. Appeal Brief 4. We have jurisdiction under 35 U.S.C. § 6(b) (2002). We affirm.

Exemplary Claim

Exemplary independent claim 1 under appeal reads as follows:

1. A method for improving a statistical message classifier, comprising:
testing a message with a machine classifier, wherein the machine classifier is capable of making a classification of the message and the machine classifier is a reliable classifier having a probability of erroneous classification of less than one percent; and
updating the statistical message classifier according to the classification made by the machine classifier, wherein the statistical message classifier is configured to detect an unsolicited message and comprises a knowledge base that tracks the spam probability of features in classified messages.

Rejections on Appeal[1]

Claims 1, 2, 5-12, 14-19, 28 and 30 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent Number Application 2005/0015626 A1 issued to Chasin ("Chasin") and U.S. Patent Number Application 2003/0204569 A1 issued to Andrews ("Andrews"). Answer 3-7.

[1] "The Appellants have elected to appeal only the rejection of independent claims 1, 20, 23, 24, 28, 29, 30 and 31." Appeal Brief 4.

Claims 13, 20, 22-26, 29 and 31 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Chasin, Andrews and Patent Number Application 2002/0199095 A1 issued to Bandini ("Bandini"). Answer 7-8.

Claim 27 stands rejected under 35 U.S.C. § 103(a) as being unpatentable over Chasin, Andrews, Bandini and U.S. Patent Number Application 6,161,130 issued to Horvitz ("Horvitz"). Answer 9.

Appellants' *Contentions*

1. "Chasin Does Not Anticipate an Erroneous Classification Probability of *Less than One Percent with 'Sufficient Specificity'*, because A Purported Range in the Cited Art Must be Disclosed with *'Sufficient Specificity*.'" Appeal Brief 19-20.
2. "Inherency Requires that the Missing Claim Element of Erroneous Classification Probability of Less than One Percent Necessarily be Present in Chasin." Appeal Brief 20-21.
3. "The Purported Obviousness of a Range Requires a Motivational Statement by the Examiner as to the Same." Appeal Brief 21.
4. "Chasin is not Enabled with Respect to an Erroneous Classification *Probability of 'Less than One Percent*.'" Appeal Brief 22.

Issue on Appeal

Did the Examiner err in rejecting claims independent claims 1, 20, 23, 24, 28, 29, 30 and 31 over various combinations of references under 35 U.S.C. § 103(a) because Chasin discloses a confidence ratio approaching 100 percent?

ANALYSIS

Appellants' contentions are centered around the assertion the claim limitation recited in all of the independent claims that a "probability of erroneous classification of less than one percent" is not anticipated by Chasin's disclosure of "'the confidence ratio used for classifying a message as spam or junk can be increased to a relatively high value, e.g., approaching 100 percent.'" See Appeal Brief 18-21; see also Chasin [0007, 0011]. We do not find the Appellants' arguments to be persuasive.

Chasin's disclosure of "no or few false positives" and "confidence ratio approaching 100 percent corresponds to the claimed "less than one percent" range. See Chasin [0007, 0011]. It is well settled that a prima facie case of obviousness exists when a claimed range overlaps the ranges disclosed in the prior art. See In re Geisler, 116 F.3d 1465, 1469-70 (Fed. Cir. 1997), In re Woodruff, 919 F.2d 1575, 1578, (Fed. Cir. 1990), In re Malagari, 499 F.2d 1297, 1303 (CCPA 1974).

Further, as stated in In re Peterson, 315 F.3d 1325, 1329-30 (Fed. Cir. 2003):

> Selecting a narrow range from within a somewhat broader range disclosed in a prior art reference is no less obvious than identifying a range that simply overlaps a disclosed range. In fact, when, as here, the claimed ranges are completely encompassed by the prior art, the conclusion is even more compelling than in the case of mere overlap.

Additionally, a prima facie case of obviousness based on overlapping ranges can be rebutted by an indication of the criticality of the claimed range such as by a showing of unexpected results relative to the prior art range. In re Woodruff, 919 F.2d at 1578. Appellants have failed to disclose any criticality that would overcome the overlapping range disclosed by Chasin.

Therefore for the reasons stated above, we will sustain the Examiner's rejections.

CONCLUSION

The Examiner has not erred in rejecting claims 1, 20, 23, 24, 28, 29, 30 and 31 as being unpatentable under the various 35 U.S.C. § 103(a) rejections.

No time for taking any action connected with this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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